

FEDERAL COMMUNICATIONS COMMISSION
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APR 15 2010

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Fond Du Lac Band of Lake Superior Chippewa
1720 Big Lake Road
Cloquet, MN 55720

Re: WGZS(FM); Cloquet, MN
Facility ID No. 172280
Fond Du Lac Band of Lake
Superior Chippewa ("Fond Du Lac")
BPED-20100111AEL

Dear Applicant:

The staff has under consideration: 1) the above-captioned minor change application filed on behalf of Fond Du Lac to modify the broadcast facilities of WGZS(FM); 2) the request for waiver of the contour overlap provisions of 47 C.F.R § 73.509; and 3) an Informal Objection from Bruce E. Elving. For the reasons stated below, we grant WGZS's waiver request, the application, and deny the Informal Objection.

Waiver Request

An engineering study of the application reveals that it is in violation of 47 C.F.R § 73.509 with respect to (1) second-adjacent channel Class C3 station (BMLED-20050204ABB), for WJRF(FM), Duluth, MN; (2) second-adjacent channel Class A construction permit (BPED-19970331MA) for WESK(FM), Esko, MN; and (3) third-adjacent channel Class A pending construction permit (BPED-19971211MC) for a NEW station at Superior, WI ("the Stations"). Fond Du Lac recognizes this violation and requests waiver of the contour overlap provisions of § 73.509.¹

In support of its waiver request, WGZS states that it will not cause interference to the Stations. WGZS also claims that the Stations' overlap area, which has been calculated to be 15 square kilometers, constitutes less than 0.2 % of the total area within WGZS's 60 dBu service contour. The proposal would increase WGZS's overall coverage to 7,946 square kilometers. In addition, the proposal will provide service to 170,948 persons. Finally, WGZS cites *Educational Information Corporation*, 6 FCC Rcd 2207 (1991), as evidence of the Commission's willingness

¹ Application BPED-19971211MC was dismissed June 19, 2007. However, a petition for reconsideration remains pending.

to consider waivers of such overlap in certain instances. WGZS states that it considers the affected area as very small when considered along with the increased service area, and concludes that waiver of § 73.509 would be warranted in this case.

Informal Objection

On February 26, 2010, the staff received an Informal Objection by Bruce E. Elving, technical consultant for WESK. Mr. Elving claims that WGZS' proposal should be denied since it would not allow WESK to make future changes. The waiver authorization contained herein will not restrict WESK in any future modifications and will not create interference. Therefore, the Informal Objection, by Mr. Elving will be denied.

Discussion

WGZS's request to receive second-adjacent channel overlap is similar to the request submitted by WCPE(FM), Raleigh, NC in the *Educational Information Corporation* case. In that case it was stated that:

The Commission has long recognized the unique characteristics of the noncommercial service and the need for flexibility to respond to the growing demand for such service. We are also more sensitive today to the increasing limitations within the reserved band which reflect the increased demand for service over the last 30 years. For these reasons, we are now inclined to grant waivers of second or third adjacent channel overlap in circumstances such as WCPE's, where the benefit of increased noncommercial educational service so heavily outweighs the potential for interference in very small areas. However, because of the concern for the ability of the stations causing interference to make any future changes in their own facilities, as discussed below, we believe that the waiver of interference received must be granted with the acknowledgement that future modifications proposed by the affected licensees will not be construed as a *per se* modification of the waiver recipient's license.

Accordingly, in light of the Commission's policy on this matter, the requested waiver of 47 C.F.R. § 73.509 will be granted.

Conclusion

We have afforded the request for waiver of § 73.509 the "hard look" called for under *WAIT Radio v. FCC*, 418 F.2d 1153 (D.C. Cir. 1969), and find that the facts and circumstances presented in the applicant's justification is sufficient to establish that grant of the requested waiver would be in the public interest.

Accordingly WGZS's request for waiver of § 73.509 IS HEREBY GRANTED, the claim of Mr. Elving treated as an Informal Objection IS HEREBY DENIED, and the application File No. BMPED-20100111AEL IS HEREBY GRANTED subject to the following condition:

Further modification of WJRF(FM), Duluth, MN, Facility ID No. 49348 will not be construed as a *per se* modification of WGZS's construction permit (BPED-20100111AEL) (*See Educational Information Corporation*, 6 FCC Rcd. 2207 (1991)).

Further modification of WESK(FM), Esko, MN, Facility ID No. 86019 will not be construed as a *per se* modification of WGZS's construction permit (BPED-20100111AEL) (*See Educational Information Corporation*, 6 FCC Rcd. 2207 (1991)).

Further modification of NEW(FM), Superior, WI, Facility ID No. 89432 will not be construed as a *per se* modification of WGZS's construction permit (BPED-20100111AEL) (*See Educational Information Corporation*, 6 FCC Rcd. 2207 (1991)).

The authorization is enclosed. These actions are taken pursuant to 47 C.F.R. § 0.283.

Sincerely,



Edna V. Prado
Supervisory Engineer
Audio Division
Media Bureau

cc: Melody Virtue
Aaron Fischer
Bruce F. Elving